

A BRIEF GUIDE TO SECONDARY OCCUPATION AND MEDIATION IN IRAQ

OVERVIEW

Like in almost every post conflict country, the secondary occupation of land, houses and public buildings, and forced evictions, became common in many governorates of Iraq recovering from conflict. These issues pose huge challenges for internally displaced persons (IDPs) and returnees.

This guide provides a brief overview of the problems that secondary occupation is causing throughout Iraq and possible solutions for resolving the disputes that arise from it, in particular, mediation.

WHAT IS SECONDARY OCCUPATION?

Secondary occupation occurs when a person occupies the land, house or building of another. Secondary occupation can occur in good faith, illegal occupation, or as land grabbing.

The secondary occupation of abandoned land and houses left by IDPs, as well as unfinished public buildings, has been by many considered to be IDPs as a temporary shelter solution for their families. Secondary occupation is often seen as a key coping mechanism for returnees who go back to original locations. Often, when IDPs return to their homes, they find another displaced person or family who originally come from their same community, but who have also been displaced, occupying their house. This results in the original owner suffering from secondary displacement.

In Iraq, the secondary occupation of houses mainly occurred as temporary solution when returnees' houses were destroyed or damaged, and so were inhabitable. It also occurred when a person or family could not return to their home because of security concerns or they were not welcomed by the local community.

As consequence, because of tenure insecurity, the secondary occupants are often threatened by the owner of the house, the community and even community leaders or local authorities, which may include threats of forced eviction. Forced evictions often result in the prolonged and protracted displacement of those impacted.

In addition, the secondary occupants are often threatened that their case will be sent to the police, to the court, or to dispute mechanisms led by local tribal or community leaders. It has been reported by HLP Partners in Iraq that there are few initiatives using mediation as an alternative dispute resolution mechanism to resolve housing, land and property (HLP) disputes, including for secondary occupation or to prevent forced evictions. One of the key issues that returnees face when pursuing a complaint of secondary occupation is the absence of any ownership documentation or HLP rights. A lack of durable solutions for resolving these precarious issues of tenure can be potential factors that lead to secondary displacement, secondary occupation, forced eviction, local conflict, and reduced livelihood opportunities for those impacted.

This issue may also be further complicated if there is an absence of local and traditional authorities who might provide an alternative mechanism of resolving the disputes.

When they are available, to resolve these challenging issues communities in Iraq sometimes use different mechanisms, including informal/customary mechanisms such as negotiation.

In the case of secondary occupations and forced evictions, one important mechanism for dealing with secondary occupation that should be established by HLP partners is to provide HLP services that safeguard the rights of the original owners and tenants, as well as the secondary occupants, who are often left without shelter or

any alternative housing solutions. In addition, prevention of violations of HLP rights by protecting the secondary occupants from forced eviction is necessary for the partners working on HLP issues. Managing and resolving such cases will contribute to the prevention of forced evictions and conflicts within communities, as well as contribute to the peaceful resolution of HLP disputes between the parties involved. This should, in turn, discourage secondary occupations and displacements.

As one solution, mediation as an alternative dispute resolution mechanism provides an opportunity for parties to resolve HLP disputes without recourse to the court or other formal mechanisms. Mediation can help both the owner of the house and the secondary occupant to find an efficient, practical, and amicable solution.

WHAT IS ALTERNATIVE DISPUTE RESOLUTION (ADR)?

ADR includes a wide spectrum of solutions to settle disputes, including HLP issues, out of court without taking formal legal action.

ADR, which includes conciliation, negotiation and arbitration, or mediation, offers the individuals involved faster and more efficient methods of resolving their disputes, without needing to go through the court process.

This guide will now provide a brief explanation of mediation as one of the means to resolve HLP disputes in Iraq, particularly in the post conflict areas where secondary occupation and forced evictions are occurring.

1. What is mediation?

Mediation is a voluntary and non-binding process where parties involved in the dispute resolve their dispute through a third, impartial party, called a mediator.

Mediation is an informal procedure, but it is well recognized by courts in many countries. In Iraq, a case mediated by the community leader (Mukhtar) or any other member of the local

authority is recognized by court in the form of a statement. The third party facilitates the process and assists the parties involved in the dispute to negotiate and resolve their dispute to reach an amicable settlement.

2. Why is mediation an effective dispute resolution mechanism for HLP disputes?

Compared with traditional solutions, mediation offers a more effective approach to resolving HLP disputes for a number of reasons, particularly those listed below.

- It is more efficient, effective, and flexible. It allows the individuals involved to be in control of the decision-making process. They are responsible for the outcome. It allows for self-determination, is confidential, private, impartial, balanced and has proven to be more successful.
- In the mediation sessions, the process and outcome are voluntary, allowing the parties involved to control the process and outcome, as well as the final agreement.
- No one can force a party involved to make a decision unless they are fully comfortable with it. Either party can quit the mediation whenever they feel uncomfortable with the process or are discontent at how it is progressing.
- There is less pressure, as there are no time limits or limitations on the number of mediation sessions held.
- It is a less intimidating process than pursuing a formal legal action before the courts or other adjudicatory body, which would have prescribed rules and strict deadlines.

3. Who can mediate HLP disputes?

A person called a mediator conducts the mediation. He or she is trained as a mediator or has technical mediation skills and remains impartial and is not a decision-maker. He or she will assist the parties involved and facilitate the process using specialized techniques of

communication and negotiation to reach an agreement. This may involve the mediator using their skills to come up with creative and innovative solutions in an attempt to find a solution that is acceptable to both parties.

The mediator is a neutral party who does not play the role of a judge, arbitrator, or lawyer. He or she does not have the authority to make any decision on behalf of the parties involved in the dispute. Instead, the mediator will assist both parties to come to an agreement.

4. Can a party involved in the dispute bring a lawyer or someone else to the mediation?

In the mediation session each party can bring anyone who they feel comfortable with. However, the parties themselves will be the only ones who will participate in the mediation session and make any decision.

5. Where can the mediation sessions take place?

Mediation sessions can be held at any venue which both parties are comfortable with. It can be held in an office, community center, mosque, church, or other place where privacy is guaranteed.

6. How much do mediation services cost?

Mediation sessions conducted by HLP partners in Iraq should be offered free of charge. No session or mediator, or accompanying costs such as the use of a venue, should need to be paid for by any party involved in the mediation process. HLP partners during their programming should build capacity on mediation and should focus also on raising funds for the mediation services.

7. What happens after an agreement is reached?

The decision to reach an agreement to resolve the dispute between both parties is completely up to those involved. Once it has been reached, it becomes binding and both parties must be committed to respect it. The agreement will

be put into writing and become binding after it is signed off by the organization providing the mediation services, both parties and the community leader.

8. What will happen if no agreement is reached?

No decision will be imposed through the mediation process if the parties cannot reach an agreement and no one can be forced to reach an agreement. The mediation process does not replace formal legal proceedings through the courts. Rather, it is an alternative solution to resolving disputes. If the dispute is not resolved through mediation, parties can still go through the court process. The parties to a mediation will likely benefit from process, even if they cannot reach an agreement, as it will encourage them to consider different perspectives and alternative solutions to these complex issues.

9. What if the other party does not respect the agreement?

If one party does not respect any of the agreed terms of the mediation, the other party may file a claim with the court for a breach of the mediation agreement.

FOR MORE INFORMATION

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